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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/658,210	09/08/2000	Suresh S. Kalkunte	10559/200001/P8417	3209

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FISH & RICHARDSON, PC  
12390 EL CAMINO REAL  
SAN DIEGO, CA 92130-2081

EXAMINER

LUU, LE HIEN

ART UNIT	PAPER NUMBER
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2141

DATE MAILED: 03/01/2004

5

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/658,210

Applicant(s)

KALKUNTE ET AL.

Examiner

Le H Luu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 September 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) 23-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 and 39-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2-3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

1. Claims 1-44 are presented for examination.
2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-22 and 39-44, drawn to redirect client request to servers based on address, classified in class 709, subclass 232.
  - II. Claims 23-38, drawn to perform round robin operation to route client request to servers, classified in class 709, subclass 239.
3. The inventions are distinct, each from the other because of the following reasons:

Inventions Group I and Group II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention Group I has separate utility such as redirecting client requests to servers based on client address, and Group II has separate utility such as performing round robin operation to route client request to servers. See MPEP § 806.05(d).
4. The inventions are distinct, each from the other because of the following reasons:
  - a. These inventions have acquired a separate status in the art as shown by their different classification
  - b. The search required for one Group is not required for the other Groups

For the reasons above restriction for examination purposes as indicated is proper.

5. During a telephone conversation with Mr. Scott Harris on 02/05/2004 a provisional election was made without traverse to prosecute the invention of GROUP I, claims 1-22 and 39-44. Affirmation of this election must be made by applicant in responding to this Office action. Claims 23-38 are withdrawn from further consideration by the Examiner, 37 C.F.R. § 1.142(b), as being drawn to a non-elected invention.

6. Applicant is requested to formally cancel the non-elected claims.

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h).

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless—

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language,

or

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

9. Claims 1-22 and 39-44 are rejected under 35 U.S.C. § 102(e) as being anticipated by **Zisapel et al. (Zisapel)** patent no. **6,665,702**.

10. As to claim 1, Zisapel teaches the invention as claimed, including a method comprising:

determining, at a first server, to which one of N mirrored servers a request from a client should be routed based at least in part on an address indicating the client and a route to the client and on the quality of service between at least some of the N mirrored servers to the client (col. 2 lines 11-14; col. 12 line 65 - col. 14 line 4; col. 15 lines 8-42);  
and

determining to route requests from other clients associated with the address to the one of the N mirrored servers (col. 15 lines 8-42).

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11. As to claims 2-4, Zisapel teaches quality of service between the mirrored servers and the client based on end to end connection or round-trip time value (col. 3 lines 22-27; col. 5 lines 24-36).

12. As to claims 5-7, Zisapel teaches Internet Protocol address, classless inter-domain routing, and not identifiable address (col. 5 lines 8-15; col. 15 lines 43-52).

13. As to claim 8, Zisapel teaches providing the fastest connection speed between the client and any of the mirrored servers (col. 15 lines 8-25).

14. As to claims 9-11, Zisapel teaches determining if the one of the N mirrored servers can handle the load routed to it, and if not, isolating a group of clients associated with the address and routed to the mirrored server by redirecting the group of clients associated with the address and connected to the mirrored server to another one of the N mirrored servers (col. 5 line 66 - col. 6 line).

15. Claims 12-22 and 39-44 have similar limitations as claims 1-11; therefore, they are rejected under the same rationale.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Le H. Luu, whose telephone number is (703) 305-9650.

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The examiner can normally be reached Monday through Friday from 7:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia, can be reached at (703) 305-4003. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-7239.

Any inquiry of a general nature of relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-9600.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

(703) 872-9306, (for formal communications; please mark "EXPEDITED PROCEDURE").

Or:

(703) 872-9306 (for informal or draft communications, please label "PROPOSED" or "DRAFT").

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

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A handwritten signature in black ink, appearing to read "Le Hien Luu", is written over a horizontal line. Another horizontal line is positioned above the signature.

LE HIEN LUU  
PRIMARY EXAMINER  
February 26, 2004